

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b))

Description of Case

Civil Misc. Writ Petition No.5631 of 2001 (S/S)

(Old No. 15109/1997)

Date of decision:-22.09.2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :-22.09.2006

Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Civil Misc. Writ Petition No. 5631 of 2001 (S/S) (Old No. 15109/1997)

1. Sri Puran Chandra Joshi S/o Sri Murlidhar Joshi
2. Sri Girdhar Singh Rana S/o Sri Umesh Singh Rana
3. Sri gopal Singh S/o Sri Diwan Singh
4. Sri Lalit Singh Dhami S/o Sri Bahadur Singh Dhami
5. Sri Bhuwaan Chandra Kandpal
S/o Sri Tara Dutt Kandpal & 45 other petitioners
...Petitioners

Versus

1. State of Uttar Pradesh through Secretary
Public Works Department
Government of U.P., Lucknow
2. The Engineer-in-Chief
Public Works Department, U.P. Lucknow
3. Himmat Singh Rawat S/o Sri Sher Singh Rawat
& 232 other private
respondents
... Respondents

Mr. B.D. Upadhyaya Advocate for the petitioners.
Mr. N.C. Gupta Standing Counsel for the State of Uttaranchal
Smt. Beena Pande Standing Counsel for the State of U.P.

**Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.**

Per Hon'ble J.C.S. Rawat, J.

1. By means of this writ petition under section 226 of the Constitution of India, the petitioners have sought the following reliefs:-

- "i) To issue writ, rule or direction in the nature of certiorari quashing the impugned order dated 6.3.1997 and the seniority list dated 19.02.1994 passed by the respondent no.2, contained in Annexure-11 & 16 respectively to this writ petition.
- (i) Issue any writ order or direction in the nature of mandamus commanding the respondent no. 2 to treat the petitioners 1 to 50 senior to the respondent nos. 3 to 235 and give them all the benefits available to them accordingly.

- (ii) Issue any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.
- (iii) Award the costs of the present writ petition in favour of the petitioners and against the respondents."

2. The U.P. Public Service Commission (hereinafter referred as 'Commission') invited the applications for appointment on the post of 1400 Junior Engineers (Civil), out of which 1000 were for plain area and 400 were for hill area. Pursuant to the said advertisement, the petitioners submitted their applications and were finally selected by the Commission on the post of Junior Engineers and the selection list was published on 6.1.1990. The Commission recommended and forwarded the list of the selected candidates to the Government according to U.P. Public Works Department Subordinates Engineering Rules, 1951. In pursuance of the recommendation, the petitioners were appointed as Junior Engineer (Civil), P.W.D. on 27.7.1990. In the meantime, the Department has appointed several persons as Junior Engineer on adhoc basis for a period of one year in the year 1984 in order to meet the necessity of work. In exercise of its power conferred under Article 309 of the Constitution of India, the Government framed U.P. Regularization of Adhoc Appointment (within the purview of Public Service Commission) Rules 1979 (hereinafter referred as Regularization Rules 1979) and these Rules were enforced w.e.f. 14.05.1979. Rule 4 of U.P. Regularization Rules 1979 provides that any person who was directly appointed on adhoc basis prior to 01.01.1977 and is continuous in service and also possesses the requisite qualification and had completed

three years continuous service will be considered for regularization. Pursuant to the said Regularization Rule 1979 the services of suitable adhoc Junior Engineers were regularized on 14.02.1990. Thereafter, the Engineer in Chief respondent no.4 issued the proposed seniority list of the junior Engineers and the objections were invited from aggrieved persons. In the said list, the names of the petitioners were placed below the adhoc appointees. The representation of the petitioners was rejected and the final seniority list was issued placing the names of the petitioners below the adhoc appointees. Thereafter, the petitioners submitted their representations against the final seniority list. Ultimately, the said representations were rejected by the respondent on 6.3.1997. the petitioners has challenged the said seniority list and the regularization of services of the adhoc Junior Engineers on the ground that the action of the respondent no. 2 in declaring the confirmation of the adhoc appointees w.e.f. 1.3.1988 is without any reason and as such the same is illegal and bad in law. It was further challenged that the regularization of the respondents was not in accordance with the Rules and no appointment letter had been issued to them prior to the joining of the petitioners. The approval order of regularization dated 14.02.1990 passed by the respondent nos. 1 to 4 cannot be treated as appointment and the adhoc Junior Engineers cannot claim seniority only on the basis of the approval for regularization. The competent authority should have issued appointment letter to those persons whose services has been regularized under said Rules. The seniority of the adhoc Junior Engineers would reckon from the date they would have received and joined the services in pursuance of the said appointment letter.

When the respondent no. 1 to 4 did not pay any heed to the requests of the petitioners, the present writ petition has been filed before this Court.

3. Heard learned counsel for the parties and perused the record.

4. Sri N.C. Gupta learned Standing Counsel for the State of Uttaranchal raised a preliminary objection with regard to the maintainability of the writ petition. It was submitted that the writ petition is liable to be dismissed on two grounds without going into the merits of this case. The first ground is that the writ petition of the petitioners should not be entertained in view of the efficacious remedy available before the Public Service Tribunal. The grievances of the petitioners could be redressed by the State Public Service Tribunal and the petitioners cannot approach to this Court directly and they should have first approached to the Tribunal. Second ground is that some of the direct appointees have filed the petition before the Tribunal which is still sub-judice and pending disposal. Sri B.D. Upadhyaya learned counsel for the petitioners refuted the contention and it was contended that the prayer made in the present writ petition cannot be granted by the Public Services Tribunal. Thus, the petitioners cannot be directed to approach the Public Service Tribunal in this case. It was further contended that merely because the Public Services Tribunal has the jurisdiction to hear and decide the matters of public servant aggrieved by the order of the State pertaining to the service matters that cannot be a ground to deny the right of the petitioners to approach the High Court by filing the writ petition.

5. It is evident from the record that a Writ Petition No. 714/2005 (S/S) Gopal Singh Bisht & other Vs. State

of Uttaranchal & others has been filed for the similar controversy by some of the directly recruited junior engineers. In the said petition, the Court was of the view that the petitioners have an alternative remedy to seek their redressal against their grievances before the State Public Service Tribunal and as such the writ petition was not entertained by the Court. The petitioners were directed to approach the Public Services Tribunal. The said petition for the similar controversy is still sub-judice and pending disposal before the Public Services Tribunal. It would be expedient in the interest of justice that the present petition should also be heard and disposed of by the Public Services Tribunal.

6. Some of the directly recruited Junior Engineers had filed a separate writ petition No. 630(S/S) 2006 seeking same reliefs against the regularized Junior Engineers in this Court. After considering the entire aspect, we were of the view that the petitioners have an alternative remedy to seek their redressal against their grievance before the State Public Service Tribunal. This petition is squarely covered by the judgment of the Writ Petition No. 630(S/S) 2006.

7. The petition is disposed of in terms of Writ petition No. 630 (S/S) of 2006.

8. The parties will bear their own costs.

9. Consequently, the stay order dated 10.03.1998 stands vacated.

(J.C.S. Rawat, J.)

(Rajeev Gupta, C.J.)

Dated : 22nd Sept., 2006

LSR